



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100

[Docket No. USCG-2012-0073]

RIN 1625-AA08

Special Local Regulations; Ocean State Tall Ships Festival
2012, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, for the Ocean State Tall Ships Festival 2012. This action is necessary to provide for the safety of life and property on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, during the Ocean State Tall Ships Festival on July 6-9, 2012. These temporary special local regulations would restrict vessel traffic in portions of Narragansett Bay and Newport Harbor, Rhode Island, unless authorized by the Captain of the Port (COTP) Sector Southeastern New England.

DATES: Comments and related material must be received by

the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0073 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Edward G. LeBlanc,

Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail Edward.G.LeBlanc@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (**USCG-2012-0073**), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand

deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0073 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-

2012-0073 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this

rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

The legal basis for this proposed rule is [33 U.S.C. 1233](#), which authorizes the Coast Guard to define Special Local Regulations.

These temporary special local regulations are necessary to ensure the safety of vessels and spectators from hazards associated with the Ocean State Tall Ships Festival 2012.

Discussion of Proposed Rule

Newport, Rhode Island, will host the Ocean State Tall Ships Festival 2012 from July 6-9, 2012. This visit of Class A, B, and C sailing vessels is part of a recurring series of sail training races, rallies, cruises, and port festivals organized by Tall Ships America in conjunction with host ports in the United States and Canada. The Ocean State Tall Ships Festival 2012, including a Parade of Sail, is akin to similar events held several times in the past in Newport, Rhode Island, the most recent being in 2007.

The Tall Ships visit to Newport, which will occur from July 6-9, 2012, will include a Parade of Sail on July 9, 2012. About 20 Class A, B, and C vessels are expected to participate in the Parade of Sail. These temporary special

local regulations will provide for the safety of life and protection of property on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, by providing for the organized viewing of Tall Ships at their assigned berths during the festival and by preventing the large number of spectator vessels from interfering with the organized and controlled Parade of Sail. There may be vessels participating in the event from several foreign countries and the high visibility of this event warrants that temporary special local regulations be established to ensure the safety of vessels and spectators from hazards associated with the Ocean State Tall Ships Festival 2012.

The participating vessels will berth at assigned facilities in Newport, Rhode Island, from July 5-9 2012. The festival begins on July 6, 2012, when visitors will be permitted to get a relatively close view of the Tall Ships from recreational vessels in Newport Harbor, and also to board the berthed vessels from shore. On the morning of July 9, 2012, the Tall Ships will depart Newport Harbor and transit up the East Passage, Narragansett Bay, to a turning point just north of Gould Island. The vessels will then transit back down the East Passage, exit Narragansett Bay, and head for sea.

The Coast Guard believes that vessel congestion due to

the large number of participating and spectator vessels may pose a significant hazard to navigation. To reduce the risk associated with congested waterways the Coast Guard is proposing to establish regulated areas to restrict vessel movement around the location of the participating Tall Ships while berthed at Newport, Rhode Island, and also while participating in the Parade of Sail in Narragansett Bay. These temporary special local regulations would be in effect at various times in Narragansett Bay beginning on July 6, 2012 through July 9, 2012.

Area "Newport Harbor": This Area would include all waters of Newport Harbor within an area bounded by Aquidneck Island to the east and south, by the Goat Island Causeway to the north, and by a line extending from the southernmost tip of Goat Island due south to Aquidneck Island. This area is needed to protect the maritime public and participating vessels from hazards to navigation associated with numerous spectator craft approaching participating Tall Ships berthed at various facilities in the Newport area for the Ocean State Tall Ships Festival 2012.

Area "Potter Cove": In connection with the Parade of Sail on July 9, 2012, this area would be of the same coordinates of the existing Anchorage A in the East

Passage, Narragansett Bay, that lies north of the Claiborne Pell/Newport Bridge. This area would be used as a spectator anchoring area limited to excursion and passenger-for-hire vessels greater than 50 feet in length carrying passengers for the viewing of the Parade of Sail.

Vessels other than excursion and passenger-for-hire vessels greater than 50 feet in length would not be permitted to anchor and would be required to transit at reduced speeds staying at least 20 yards away from any vessels authorized to anchor or otherwise remain within Area Potter Cove.

Area "Parade of Sail":

The Coast Guard proposes to establish an area to ensure the safety of spectator vessels and participating Tall Ships during the Ocean State Tall Ships Festival 2012 Parade of Sail on July 9, 2012.

This proposed Area includes all waters of the East Passage, Narragansett Bay, Rhode Island.

This area would be enforced only during the actual Parade of Sail. This area is designed to enhance navigation safety by facilitating the organized and controlled transit of participating vessels through the parade route and minimizing the impact on the maritime community.

Notice of these special local regulations would be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

The specific geographic locations of regulated areas and specific requirements of this rule are contained in the regulatory text.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to

be minimal. These proposed regulations involve only the southern portion of Narragansett Bay and would close the East Passage to commercial traffic only for several hours during the actual Parade of Sail on July 9, 2012. The West Passage would remain open to vessel traffic at all times. The impact of these proposed regulations will not be significant because the majority of these proposed regulations would be in effect for only a portion of one day centered on the Parade of Sail, and most vessel traffic can pass safely around affected areas of the East Passage by transiting through the West Passage, Narragansett Bay.

Notice of these special local regulations would be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

Mariners will be able to adjust their plans accordingly based on the extensive advance information.

Moreover, the Areas created by these special local regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay between July 6 and July 9, 2012, particularly during the Parade of Sail on July 9, 2012, when the navigation channel in the East Passage, Narragansett Bay, is closed for a period of time to all traffic except vessels participating in the Parade of Sail.

These proposed regulations would not have a significant economic impact on a substantial number of small entities for the following reasons: the regulations affecting navigation in the East Passage, Narragansett Bay, would be in effect temporarily, and only for those periods

of time necessary for the safety of the Ocean State Tall Ships Festival 2012 participants and spectators in boats viewing the Parade of Sail from waters adjacent to the parade route. The East Passage would remain open to all vessel traffic for the entire Festival from July 6-8, 2012, and would only be closed to vessel traffic for several hours during the Parade of Sail on July 9, 2012. While the East Passage is closed, the West Passage would remain open and is capable of being used by all recreational and most commercial vessels.

Notice of these special local regulations would be provided prior to the event by Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, internet sites, television and radio broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A proposed rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive

Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not

designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy

Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. It appears that this proposed rule will qualify for Coast Guard categorical exclusion (34)(h), as described in figure 2-1 of the Instruction. This proposed rule establishes temporary special local regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100 -- SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add §100.35T01-0073 to read as follows:

§100.35T01-0073 Special Local Regulations; Ocean State Tall

Ships 2012, Narragansett Bay and Newport Harbor, Rhode Island.

(a) Regulated Areas:

(1) Area Newport Harbor: All waters of Newport Harbor within an area bounded by Aquidneck Island to the east and south; by the Goat Island Causeway to the north; and by a line extending from the southernmost tip of Goat Island due south to Aquidneck Island.

(2) Area Potter Cove: This Area is of the same coordinates as that portion of charted Anchorage A, as defined in paragraph § 110.145(a)(1) of this chapter, that lies north of the Claiborne Pell/Newport Bridge.

(3) Area Parade of Sail: Includes all waters of the East Passage, Narragansett Bay, Rhode, Island, within the following boundaries: Beginning at position 41°27'19"N, 71°23'08"W, then northward to position 41°28'18"N, 71°22'14"W, (Lighted Gong Buoy "7" (LLNR 17800)) then to position 41°28'38"N, 71°21'15"W, (Lighted Gong Buoy "9" (LLNR 17805)) then to position 41°29'00"N, 71°21'00"W, (Lighted Bell Buoy "11" (LLNR 17810)) then to position 41°29'33"N, 71°21'04"W, then to position 41°30'19", 71°21'04"W below the Claiborne Pell/Newport Bridge, then to position 41°31'07"N, 71°21'17"W, then to position

41°31'49"N, 71°21'26"W, then to position 41°32'30"N, 71°21'22"W, then to position 41°33'00"N, 71°21'17"W, then to position 41°33'38"N, 71°21'00"W, (U.S. Navy Buoy "E" (LLNR 18035)) then to position 41°33'52", 71°20'27"W, (U.S. Navy Buoy "F" (LLNR 18040)) then to position 41°33'48"N, 71°19'55"W, (the charted Halfway Rock). Area Parade of Sail will continue southward to position 41°33'14"N, 71°19'12.5"W, then to position 41°32'28"N, 71°19'30.6"W, then to position 41°31'55"N, 71°19'42.7"W, then to position 41°31'00"N, 71°20'04"W, (Lighted Bell Buoy "14" (LLNR 17940)) then to position 41°30'28"N, 71°20'21"W, then to position 41°30'12", 71°20'30"W below the Claiborne Pell/Newport Bridge, then to position 41°29'34"N, 71°20'11"W, (Mitchell Rock Gong Buoy "3" (LLNR 17865)), then to position 41°28'55"N, 71°20'19"W, then to position 41°27'55"N, 71°21'43"W, then to position 41°27'27"N, 71°21'57"W, (Bell Buoy "6" (LLNR 17790)), then to position 41°26'57", 71°21'57"W, then returning to the starting point at 41°27'19"N, 71°23'08"W. All coordinates are NAD 1983.

(b) Special Local Regulations.

(1) Definitions.

- (i) As used in this section, designated representative

means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, or local officer designated by the Captain of the Port (COTP).

(ii) Excursion vessel, as used in this sections, refers to any vessel granted an excursion permit as such term is defined in 46 CFR § 2.01-45.

(iii) Vessel carrying passengers-for-hire, as used in this section, refers to, but is not limited to, vessels subject to regulation under Subchapters H, K, and T of Title 46 of the Code of Federal Regulations.

(2) In accordance with the general regulations in section 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless designated for vessels of that size or entry is authorized by the Captain of the Port (COTP) Southeastern New England or designated representative.

(3) All persons and vessels are authorized by the COTP Southeastern New England to enter areas of these special location regulations in accordance with the following restrictions:

(i) Area Newport Harbor: Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6)

knots. Vessels must not maneuver within 20 yards of a moored Tall Ship. Vessels must transit this Area in a counterclockwise direction, entering Newport Harbor from the west, then proceeding north along the eastern side of the harbor to a turning point south of the Goat Island causeway in approximate position $41^{\circ}29'28''\text{N}$ and $71^{\circ}19'40''\text{N}$, then proceeding south along the western side of Newport Harbor to the exit of the Area.

Vessels proceeding under sail will not be allowed in Area Newport Harbor unless also propelled by machinery, due to increased difficulty in maintaining required speed of advance while sailing as well as limited maneuvering ability to proceed in a single file behind numerous other spectator craft viewing the moored Tall Ships.

(ii) Area Potter Cove: This area is a spectator anchoring area limited to excursion and passenger-for-hire vessels greater than 50 feet in length carrying passengers for the viewing of the Parade of Sail. Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6) knots. Vessels transiting this Area must not maneuver within 20 yards of any vessel lawfully anchored within this area for the viewing of the Parade of Sail.

(iii) Area Parade of Sail: This will be closed to all

vessel traffic, except those vessels designated as participants.

(4) All persons and vessels shall comply with the instructions of the COTP Southeastern New England or designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(5) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP Southeastern New England by telephone at 508-457-3211, or designated representatives via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Southeastern New England or designated representative, all

persons and vessels receiving such authorization must comply with the instructions of the COTP Southeastern New England or designated representative.

(6) The Coast Guard will provide notice of the regulated areas prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives

(c) Enforcement Period: This section will be enforced during the following times.

(1) Area Newport Harbor, from 6 a.m. on July 6, 2012, to noon on July 9, 2012.

(2) Area Potter Cove, from 9 a.m. to 4 p.m. on July 9, 2012.

(3) Area Parade of Sail, from 9 a.m. to 4 p.m. on July 9, 2012.

Dated: 29 Feb 2012

Verne B. Gifford, Jr.
Captain, U.S. Coast Guard
Captain of the Port, Southeastern New England

[FR Doc. 2012-6986 Filed 03/22/2012 at 8:45 am; Publication Date: 03/23/2012]